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Supreme Court of the United States

October Term, 1996

ALBERT G. PRODELL, MICHAEL FUCITO, CAROLYN BAIER, NORMAN E. HOLDEN, WILLIAM C. HUDSON, RICHARD STRAND, MARY LOU ABATA, JOY KIRSCHENBAUM, PETER VALLELY and JOHN K. DOLLARD, individually and on behalf of all other persons similarly situated, and the SHOREHAM-WADING RIVER CENTRAL SCHOOL DISTRICT,

Petitioners,

against

THE STATE OF NEW YORK and THE TOWN OF BROOKHAVEN,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI OF THE NEW YORK STATE APPELLATE DIVISION, THIRD DEPARTMENT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the equal protection requirement of the 14th Amendment, does a New York statute imposing property tax refund liability on taxpayers of a school district only in the case of an overassessed nuclear power plant rationally further the State's interest in assuring that all similarly situated taxpayers bear the same burden regarding real property tax refunds, when there is only one such district within the taxing jurisdiction and the imposition of the liability is unrelated to either the absolute or relative amount of refunds as compared to tax refunds respecting other types of property?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

ALBERT G. PRODELL, MICHAEL FUCITO, CAROLYN BAIER, NORMAN E. HOLDEN, WILLIAM C. HUDSON, RICHARD STRAND, MARY LOU ABATA, JOY KIRSCHENBAUM, PETER VALLELY AND JOHN K. DOLLARD, individually and on behalf of all other persons similarly situated, and the SHOREHAM-WADING RIVER CENTRAL SCHOOL DISTRICT

Petitioners,

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THE STATE OF NEW YORK and THE TOWN OF BROOKHAVEN,

Respondents.

PETITION FOR A WRIT OF CERTIORARI

Petitioners Albert G. Prodell, Michael Fucito, Carolyn Baier, Norman E. Holden, William C. Hudson, Richard Strand, Mary Lou Abata, Joy Kirschenbaum, Peter Vallely and John K. Dollard, individually and on behalf of all other persons similarly situated, and the Shoreham-Wading River Central School District, respectfully pray that a writ of certiorari issue to review the Opinion and Order of the New York State Appellate

Division, Third Department, in this action decided and entered July 18, 1996.

Opinions Below

The Order of the New York Court of Appeals, dated February 13, 1997, denying a motion for leave to appeal, is reported at 89 N.Y.2d 809 (1997), and is reprinted in Appendix A hereto, p.1a, *infra.*

The Order of the New York Court of Appeals, dated October 22, 1996, dismissing the appeal, is reported at 88 N.Y.2d 1064 (1997), and is reprinted in Appendix B hereto, p. 2a, *infra.*

The Opinion and Order of the New York Appellate Division, Third Department, decided and entered July 18, 1996, is reported at 222 A.D.2d 178, 645 N.Y.S.2d 589 (3d Dept. 1996), and is reprinted in Appendix C hereto, p. 3a, *infra.*

The Decision of the New York Supreme Court, Albany County (Kahn, J.), dated June 29, 1995, is reported at 166 Misc. 608, 630 N.Y.S.2d 880 (Sup. Ct. Albany Cty. 1996), and is reprinted in Appendix D hereto, p. 9a, *infra.*

Jurisdiction

The order of the New York State Court of Appeals denying discretionary review was entered February 13, 1997. This petition for a writ of certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 USC § 1257(a)

The Statute Involved

Article I, Section 3 of the New York State Suffolk County Tax Act ("SCTA") as amended by Chapter 1018 of the Laws of 1983 ("Chapter 1018") reads, in part, as follows:

> Any final order in a proceeding under article seven of the real property tax law which orders or directs the correction or striking of an assessment appearing on that portion of a town assessment roll applicable to a school district, shall be binding on such town. Any amount of taxes of such school district at any time collected upon such assessment in excess of the amount which would have been paid had such assessment been made as determined by such order, shall be refunded by the county and shall be charged by the county to such town. **Such refund shall not be charged by the town to such school district, except where the assessment subject to such proceeding is applicable to property improved by a nuclear powered electrical generating facility. In such case, the town shall charge such school district any amount of taxes collected by such school district upon such assessment in excess of the amount which would have been paid had such assessment been made as determined by such order.**

SCTA Art. I, § 3 (emphasis added).

STATEMENT OF THE CASE

This Petition is brought to remedy the ruinous impact that will befall taxpayers in a small school district on Long Island as a

result of having been singled out by the State Legislature to make multi-year real property tax refunds to the Long Island Lighting Company ("LILCO") in violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. Although tax refunds are normally not the obligation of school districts within New York's Suffolk County, the Legislature articulated its hope to promote taxpayer equity by saddling taxpayers in a school district having a nuclear plant within its territory (there being only one) with such refund liability. But as the New York Supreme Court found, the "classification and the goal, the 'means' and the 'end', are wholly disconnected." *Prodell v. State of New York*, 166 Misc. 608, 613, 630 N.Y.S.2d 880, 884 (Sup. Ct. Albany Cty. 1995) (App. D, *infra*, p. 16a). To make matters worse, unforeseen events occurring subsequent to the enactment of the statute in 1983, creating this arbitrary and irrational classification, have greatly compounded the injurious, unconstitutional impact of the statute.

The LILCO Tax Challenges:

The background to this petition is a series of real property tax challenges brought by LILCO to contest the Town of Brookhaven's assessment of the Shoreham plant for the 1976-77 through 1992-93 tax years, excluding 1979-80. After a consolidated trial covering the 1976-77 through 1983-84 tax years, the Suffolk County Supreme Court awarded LILCO tax refunds of $38,145,885 plus interest, out of LILCO's claim for approximately $311 million. *See Long Island Lighting Company v. Assessor for the Town of Brookhaven*, 202 A.D.2d 32, 616 N.Y.S.2d 375 (2d Dept. 1994), *lv. denied*, 85 N.Y.2d 809, 628 N.Y.S.2d 222 (1995) [hereinafter referred to as "Phase I"]. The County of Suffolk paid $81 million to LILCO on January 3, 1996, and has charged back to the Town of Brookhaven the

Town's portion and the amount that would be chargeable to the School District and its residents under Chapter 1018. However, because of the injunction issued by the Supreme Court in this case on August 3, 1995, and a statutory stay pursuant to the New York Civil Practice Law and Rules § 5519, the Town has not yet taken the steps to recover the charge-back from the School District.

In consolidated proceedings for the 1984-85 through 1991-92 tax years ("Phase II"), LILCO sought a refund of approximately $600 million, plus interest. On November 7, 1996, the Supreme Court, Suffolk County (Stark, J.) issued its Phase II decision adopting in full LILCO's claimed valuations, and reduced the Shoreham plant's full value to zero for the 1988, 1989, 1990 and 1991 relevant tax status dates. The result of this decision is that LILCO claims over one billion dollars in refunds and interest, of which the School District taxpayers would be liable for 41 percent. In combination with the $84 million already paid by the County of Suffolk from the Phase I case, the School District's potential liability could exceed $500 million. This means that the approximate 4,300 taxpayers/3,900 households in the District will each be responsible for an average of close to $100,000 in tax refunds to LILCO.

The Enactment of Chapter 1018 of the Laws of 1983 and the Decisions Below:

During the pendency of LILCO's tax challenges, former Governor Cuomo signed into law Chapter 1018 of the Laws of 1983 on November 7, 1983. This statute imposed tax refund liability on a school district for the first time in Long Island history. Because of the large size of towns in comparison to school districts on Long Island, the Suffolk County Tax Act codifies the historical practice of towns in this region absorbing

tax refunds attributable to school districts. The challenged statute makes an exception to this long standing policy in the one notable case where property is improved by a nuclear powered electrical generating facility.

Plaintiffs immediately commenced this action in response to the discriminatory treatment.[1] The New York Supreme Court (Kahn, J.[2]) granted judgment to the plaintiffs, voiding and enjoining enforcement of the statute. In a scholarly opinion, the court found that Chapter 1018 violates the Equal Protection Clauses of the State and Federal Constitutions because it creates an impermissible classification bearing no relationship to any legitimate State purpose. *Prodell,* 166 Misc.2d at 614, 630 N.Y.S.2d at 884 (App. D, *infra*, p. 17a).

On July 18, 1996, however, the Appellate Division, Third Department reversed. The appellate court believed that the Legislature was warranted in assuming that any tax refund owed respecting a nuclear plant would be substantial and would be an unconscionable burden to place on taxpayers not residing in the subject School District. The court failed, however, to address the extreme burden that would be placed on those current taxpayers in the District who also received no benefit from the original overassessments. *Prodell v. State*, 222 A.D.2d 178, 182, 645 N.Y.S.2d 589, 589 (3d Dept. 1996) (App. C, *infra*, p. 6a). The court also completely disregarded the illogic of assuming that an

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[1] To insure the justiciability of the controversy, the matter was held in abeyance for several years pending the outcome of the Phase I tax case. *See Prodell v. State of New York*, 211 A.D.2d 966, 621 N.Y.S.2d 712 (3d Dept. 1995).

[2] Judge Lawrence E. Kahn was appointed Federal District Judge for the Northern District of New York in 1996.

overassessment of a nuclear facility would be more likely to occur or be any greater than an overassessment of any other type of property.

On or about July 30, 1996, Plaintiffs filed a Notice of Appeal to the New York State Court of Appeals. The Court dismissed the appeal by *sua sponte* order on October 22, 1996, on the stated ground that no substantial constitutional question was directly involved. 88 N.Y.2d 1064 (App. B, *infra*, p. 2a). Plaintiffs then filed a motion for discretionary review by the Court of Appeals, which was denied on February 13, 1997. 89 N.Y.2d 809 (App. A, *infra*, p. 1a).

The Violation of Equal Protection and Its Injurious Impact on the School District:

The Shoreham Wading-River School District is a middle-class community containing approximately 3,938 households. Prior to February 28, 1992, the total assessed valuation within the District was $235,000,000. On that date, LILCO transferred the Shoreham plant to the Long Island Power Authority ("LIPA") pursuant to the 1989 "settlement agreement" with the State of New York. *See generally COEP v. Cuomo*, 78 N.Y.2d 398, 576 N.Y.S.2d 185 (1991). Because of LIPA's tax exempt status, the District's assessed valuation was reduced overnight to $80,000,000. For the District's 1991-92 fiscal year, when the Shoreham plant constituted over 90 percent of the District's total assessed valuation, LILCO paid approximately $32 million in school taxes, out of a total budget of $48 million. Since the State's acquisition of the plant, the District's budget has been dramatically reduced in each year to a level in the 1995-96 fiscal year of $31 million, with LIPA making payments in lieu of taxes ("PILOT") in the amount of under $21 million. Prior to its transfer to LIPA, the Shoreham plant also represented over 90

percent of the assessed valuations of both of the Wading River Fire District and Shoreham-Wading River Library District, neither of whom are liable for refunds.

The ruling in the Phase II tax certiorari case now means that, pursuant to Chapter 1018, each of the taxpayers in the School District is potentially saddled with a $100,000 tax refund obligation to LILCO. Already, the obvious overwhelming and ruinous impact of this tax refund obligation on District residents is having severe consequences. Real estate transactions have come to a standstill, with buyers defaulting on their contracts. If this situation is not addressed, many homes and businesses will be lost to tax foreclosure by the County of Suffolk, who will then be the obligee to LILCO.

This result is both extreme and contrary to expressed legislative intent because of a number of historical factors that have worked together in unexpected ways:

(1) In 1983, the Legislature passed Chapter 1018 assuming that the Shoreham plant, even if overassessed, would remain on the tax rolls with a substantial value. As a large portion of the total assessed value in the District, the plant would have continued to be taxable and would have moderated the refund liability of non-LILCO taxpayers; that is, LILCO would have paid a substantial portion of its own tax refund;

(2) In 1986, the New York Legislature passed the LIPA Act, Public Authorities Law ("PAL") §§ 1020 - 1020-hh, calling for the acquisition of LILCO by LIPA. Recognizing the potential overassessments of the plant, the Legislature fashioned a specific solution to preserve the financial solvency of the affected municipalities. PAL § 1020-q

therefore provided for a phase-down in PILOT in exchange for the elimination of tax refund liability;

(3) PAL 1020-q, however, was ruled unconstitutional as applied to LILCO. *See LILCO v. Assessor*, 154 A.D.2d 188, 552 N.Y.S.2d 336 (2d Dept. 1990). If, however, LIPA had acquired all of LILCO's assets, the legislative intent—of eliminating devastating refund liability—could have been implemented, *see* PAL § 1020-q(3) ("no municipality … shall be liable to the authority … for a refund of property taxes");

(4) In 1989, rather than acquiring all of LILCO, the State entered into a non-legislative "settlement agreement" with LILCO to acquire only Shoreham, but leaving (contrary to the original legislative intent) the tax certiorari claims unresolved. See PAL § 1020-q(3); *see generally COEP v. Cuomo*, 78 N.Y.2d 398 (1991). As a result, Shoreham School District taxpayers were made vulnerable to ruinous refund liability while simultaneously facing future, huge increases in taxes as a result of the District losing almost all of its tax base.

The consequence of this history is that taxpayers in a small school district have been placed at the door of complete and total ruin in ways unintended and unforeseen by the New York Legislature. If events had occurred as anticipated, Chapter 1018, while still unconstitutional, may not have led to this disastrous and unconscionable result now faced by District taxpayers.

The combination of Chapter 1018, the removal of the plant from the tax rolls, and the tax review decisions in Phase I and Phase II, now results in the ten-percent portion of the former tax base of the District obligated for massive tax refunds to the 90-

percent portion of the tax base for fifteen past tax years. This tax refund burden, from which all other Long Island school districts are exempt, falls on future taxpayers who had no responsibility for setting the illegal assessment, and many of whom have received no benefit from it. This result places an unconscionable and wholly ruinous burden on innocent citizens and school children. The Appellate Division's validation of Chapter 1018 therefore warrants review by this Court.

REASONS FOR GRANTING THE PETITION

Chapter 1018 Imposing Tax Refund Liability On A School District Only In The Case Of Nuclear Plant Overassessment Is Not Rationally Related To The Legislative Goal Of Avoiding "Tax Windfalls."

The Albany County Supreme Court declared Chapter 1018 of the Laws of 1983 "unconstitutional under both the New York State and Federal Constitutions because the classification created bears no relationship to the achievement of a legitimate State purpose ..." *Prodell*, 166 Misc. at 614, 630 N.Y.S.2d at 884 (App. D, *infra*, p. 17a). The statutory classification—imposing a singular and ruinous liability on taxpayers in a school district in which the owner of a nuclear powered electric generating facility obtains property tax refunds—is not rationally related to the stated legislative purpose of Chapter 1018 to insure that all similarly situated taxpayers bear the same tax burden with respect to real property tax refunds. The statute therefore violates the Equal Protection guarantees of the Fourteenth Amendment. *See City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985); *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985); *Western & Southern Life Insurance Company v. State Board of Equalization*, 451 U.S. 648, 657 (1981); *Vance v. Bradley*, 440 U.S. 93,

97 (1979); *Trump v. Chu*, 65 N.Y.2d 20, 25, 489 N.Y.S.2d 455 (1985), *appeal dismissed*, 474 U.S. 915 (1985); *Long Island Lighting Company v. Assessor*, 154 A.D.2d 188, 193-94, 552 N.Y.S.2d 336, 339-40 (2d Dept. 1990); *Town of Brookhaven v. State of New York*, 142 A.D.2d 338, 340, 535 N.Y.S.2d 773, 775 (3d Dept. 1988), *appeal dismissed*, 74 N.Y.2d 714 (1989).

The Appellate Division reversed, disagreeing that the statutory classification and legislative goal are wholly disconnected. The appellate court accepted the unfounded legislative sentiment that a nuclear plant, because of its "high value," would create a tax haven that would result in a tax windfall to school district taxpayers in the event of a reduction in assessments on the nuclear plant, no matter how great the amount, as opposed to other types of property. Not only is it irrational to say that nuclear plant assessment reductions create windfalls whereas other property assessment reductions do not, the Appellate Division's statement is itself a tautology. Although it is a truism that a "tax refund would impose a greater tax windfall for school districts with such [nuclear] facilities if they did not have to pay the entire refund themselves", that statement in no way addresses the issue of taxpayer equity and the justification for treating refunds respecting nuclear facilities differently from refunds as to other types of property. See *Prodell*, 222 A.D.2d at 182, 645 N.Y.S.2d at 589 (App. C, *infra,* p. 7a). There is no rational connection between the "high value" of nuclear facilities (which, as the tax certiorari court found, may be worth zero) and the likelihood of overassessments (a judicial determination under Article 7 of the New York Real Property Tax Law

("RPTL")) that would lead to a tax windfall if the district taxpayers did not have to pay the entire refund themselves.[3]

The Appellate Division's reasoning is further flawed in that it is based upon a miscomprehension of the parties impacted by the imposition of refund liability. In its decision, the court found

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[3] According to the Legislative Memorandum in support of Chapter 1018, the statute "is designed to prevent the taxpayers in Brookhaven Township from paying any tax refund on behalf to [sic] the Shoreham-Wading River School District due to Grievance system settlements on the LILCO nuclear power plant." N.Y.S. Assem. Mem. in Support of Bill No. 3969; *see* N.Y.S. Assem. 1983 Com. Mem. for Bill No. 3969. Two reasons are cited for the "policy":

> [N]uclear powered electric generating facilities have created "tax havens" resulting in lower school taxes for residents of school districts which contain them. Taxpayers not located in those "tax haven" school districts should not have to pay school tax refunds to the power facilities receiving assessment reductions.
>
> * * *
>
> In the specific case of the LILCO nuclear power plant at Shoreham it is possible that the school district refund for past certioraris could amount to as much as $18 million. This would be an unconscionable burden to place on the taxpayers of Brookhaven Township when the people of the Shoreham-Wading River School District reaped the original $18 million tax refund.

Id. The purpose of Chapter 1018 is thus to avoid placing a burden on the taxpayers of the Town by preventing the District from reaping a "windfall" in the event of a multi-million dollar real property tax refund resulting from an overassessment of Shoreham.

that Chapter 1018 was justified by the "unconscionable burden" that would be placed on "those taxpayers not residing within the school districts [sic] that reaped the initial benefits." 222 A.D.2d at 182, 645 N.Y.S.2d at 589) (App. C, p. 7a, *infra*). But current taxpayers in the District now saddled with these massive refunds may have received no more benefit from the taxes originally assessed against the Shoreham plant during 1976 through 1983 than taxpayers outside the District. Taxpayers who arguably did receive the greatest benefit, those with school age children during the those years, may no longer even be part of the class of taxpayers subjected to the refund liability.

Moreover, the Appellate Division's novel concept of directly linking taxes and tax refunds to benefits "reaped" was contrived solely for this particular situation, since the law of taxation in New York State does not make or require such a connection between the *ad valorem* taxation of real property and the benefits "reaped" by any particular taxpayer. *Matter of New York Telephone Co. v. Common Council of City of Rye*, 43 Misc.2d 668, 669-70, 252 N.Y.S.2d 126, 128 (Sup. Ct. Westchester Cty. 1964), *aff'd* 25 A.D.2d 682, 269 N.Y.S.2d 692 (2d Dept. 1966); *Church of Christ the King, Inc. v. City of Yonkers*, 115 Misc.2d 461, 463, 454 N.Y.S.2d 273, 275 (Sup. Ct. Westchester Cty. 1982). Taxes are simply assessed against property based on its full value or a uniform percentage of value, not benefits received. RPTL § 305. As this Court has recognized, a more important concern is the "protection of reasonable reliance interests." *Nordlinger v. Hahn*, 505 U.S. 1, 13-14 (1992) (tax classification creating dramatic disparities in taxes upheld in part because of the reasonable reliance of property owners as to the anticipated property tax burden). Given the long-standing historical policy and practice on Long Island of school district taxpayers having never been subjected to tax refund liability of any kind, taxpayers within the Shoreham District acquired their

property with a reasonable expectation as to the scope of future tax liability and do "not have the option of deciding not to buy ... if taxes become prohibitively high." *See id.* at 13. Certainly the imposition of a $100,000 liability on each and every household and small business within the District, contrary to reasonable expectations, is prohibitively high.

The Appellate Division's strained justification for upholding the statute is in conflict with the decisions of this and other Federal courts. As has been frequently held, a court in reviewing whether a classification is rationally related to the stated governmental purpose is not permitted to strain its imagination to conceive of every possible rational basis for the law simply to preserve the statutory classification—particularly when the Legislature's goal is easily discerned from the statute itself or from its legislative history. *See Johnson v. Robison*, 415 U.S. 361, 376 (1974); *Long Island Lighting Co. v. Cuomo*, 666 F. Supp. 370, 421-22, 424 (N.D.N.Y. 1987), *appealed on other grounds, vacated as moot,* 888 F2d 230 (2d Cir. 1989); *see also Nordlinger v. Hahn*, 505 U.S. 1, 16 n. 7 (1992). Once the court ascertains the underlying purpose of the statutory classification, it must declare the statute unconstitutional if the relationship between the classification and the legitimate state interest is "so attenuated as to render the distinction arbitrary or irrational." *City of Cleburne*, 473 U.S. at 446; *see Nordlinger*, 505 U.S. at 11; *Long Island Lighting Co. v. Cuomo*, 666 F. Supp. at 422. Thus, a legitimate State interest in eliminating "tax windfalls" cannot be advanced by creating an arbitrary, capricious, or invidious distinction between its citizens. *See Memorial Hospital v. Maricopa County*, 415 U.S. 250, 263-264 (1974); *Shapiro v. Thompson*, 394 U.S. 618, 633 (1969); *Lee v. Smith*, 43 N.Y.2d 453, 461, 402 N.Y.S.2d 351 (1977). This is particularly true in the area of real property taxation where the integrity of the system rests upon the premise that similarly situated

taxpayers pay the same share of the tax burden. *Foss v. City of Rochester*, 65 N.Y.2d 247, 254, 491 N.Y.S.2d 128, 132 (1985); *Long Island Lighting Company v. Assessor*, 154 A.D.2d at 195, 552 N.Y.S.2d at 340-41.

Here, the classification of nuclear plant refunds is completely attenuated from the legislative goal of preventing tax havens and/or windfalls. As Judge Kahn explained, the "palpably arbitrary" classification created by the challenged statute does not facilitate the legislative goal of providing for similarly situated taxpayers (all of those within Suffolk County) to be treated uniformly, since "**[a]ny** type of improvement to real property can create a tax haven for residents of a school district if the result is that the particular parcel contributes a substantial portion of the tax base"; and similarly, "a 'windfall' if [such residents] ... are not made to refund the school taxes that this overassessed improvement generated." *Prodell*, 166 Misc. at 612-13, 630 N.Y.S.2d at 883 (emphasis added) (App. D, *infra*, p. 15a).

Although the New York Legislature viewed a potential multi-million dollar refund resulting from an overassessment of Shoreham as improperly burdening the Town and providing a windfall to the District, the statute shifts refund liability from the Town to the District regardless of the amount of the refund. Whether the tax refund is one dollar or 1.15 billion dollars, or any amount in between, the result is the same: Chapter 1018 requires the School District and its 4,500 constituent taxpayers to shoulder the tax refund. But when the Town assessor overassesses any other type of property by an equal or greater amount, the shock and potentially confiscatory nature of the refund is abated by spreading it over all of the taxpayers within

the Town, which has a population of over 500,000.[4] The Legislature irrationally and arbitrarily believed that **any** Shoreham-related tax refund would impose a greater burden upon the Town and create a greater tax windfall for the District than would a tax refund of an equal or greater amount resulting

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[4] The Legislature codified the historical practice on Long Island of towns absorbing school tax refunds upon the premise that the town responsible for an overassessment and resulting overpayment of school tax ought to be responsible for restitution. *See* SCTA Art. I, § 3, as amended by Chapter 837; Budget Rept. on Assem. Bill No. 9020-A. The Legislature also believed that requiring a school district to pay the school tax portion of a refund after the voters had approved the annual school budget is unfair and could seriously undermine a district's fiscal ability to provide essential educational services. *See* N.Y.S. Assem. Mem. in Support of Bill No. 9020.

When a town overassesses property other than a nuclear powered generating facility, the statute spreads the school tax portion of the refund among all the taxpayers of the town because even the most insignificant refund is deemed too burdensome for the school district in which the property is located. The State Board of Equalization and Assessment ("SBEA") pointed out the clear incongruity between this adopted legislative policy and the rationale proffered for Chapter 1018:

> [T]he sponsor states that having towns in Suffolk County responsible for school tax refunds "is a positive policy because of the larger tax base of the town". That is, the fiscal burden of the refund is less because it is spread over a larger base. Yet, here, in a case involving what is undoubtedly the largest potential tax refund in the County, the sponsor would have the smaller base [the District] absorb the full impact of that refund.

SBEA Memorandum re Assembly Bill No. 3969, Bill Jacket at 041.

from the overassessment of a non-nuclear power plant, a mega-shopping mall, an automobile manufacturing plant, or any other large commercial or industrial property. As the Supreme Court correctly ruled, it is wholly irrational for the Legislature to shift the burden of refunding property taxes based solely on "a single irrelevant criterion" of the property as a "certain type of improvement" regardless of the amount of refund. *See Prodell*, 166 Misc. at 613, 630 N.Y.S.2d at 883-84 (App. D, *infra*, p. 15a). The Equal Protection Clause and this Court's precedents simply prohibit the State from disfavoring, with the retroactive imposition of a massive economic burden, those residents of the school district with an overassessed **nuclear** plant, as compared to residents of school districts with overassessed industrial or non-nuclear, utility property. *See Hooper v. Bernalillo County Assessor,* 472 U.S. 612 (1985) (State cannot prefer established resident veterans over newcomers in retroactive apportionment of economic benefit).

Finally, even if it could be said that the challenged statute facilitated the avoidance of tax windfalls, the statute still singles out and discriminates against school district taxpayers in favor of other special district taxpayers. There is no similar provision as that added to the Suffolk County Tax Act by Chapter 1018 imposing refund liability on fire, library, lighting or other districts, which would have equally benefited from overassessments of a nuclear facility.

Thus, affording Plaintiffs "the distinction of being the only class of Suffolk County taxpayers that may not look to their town, the tax-assessing body, to refund overpaid school taxes", *Prodell*, 166 Misc. at 612, 630 N.Y.S.2d at 883 (App. D, *infra*, p. 14a), Chapter 1018 arbitrarily and capriciously treats the District and its taxpayers differently from similarly situated governmental entities and taxpayers in three separate ways: (1)

the Shoreham School District taxpayers are treated differently and at variance with long-standing legislative policy applied to all other district taxpayers located within in the same tax assessing unit and county jurisdiction; (2) a nuclear facility is treated differently than any other property, regardless of valuation or amount of overassessment; and (3) the School District is treated differently than any other special district that may have equally benefited from nuclear plant overassessments. Singling out the Plaintiff taxpayers in any one of these ways not only offends the "element of neutrality that must always characterize the performance of the sovereign's duty to govern impartially", *LILCO v. Cuomo,* 666 F.Supp. 370, but also does not and will not advance the legislative goal of avoiding tax windfalls. As the Supreme Court correctly found, the "classification and the goal, the 'means' and the 'end', are wholly disconnected." *Prodell*, 166 Misc. at 613, 630 N.Y.S.2d at 884 (App. D, *infra*, p. 16a).

To support upholding the "palpably arbitrary" statute, the Appellate Division (in a cursory opinion) could only cite vague, general principles of constitutional law; for example, that it is not necessary for the Legislature "to resort to close distinctions or to maintain a precise, scientific uniformity" in order for legislation to be upheld as constitutional. *Prodell* 222 A.D.2d at 182, 645 N.Y.S..2d at 589 (App. C, *infra*, p. 8a). The court summarily proclaimed that Chapter 1018 is constitutional merely because the State has a legitimate interest in preventing a school district and its taxpayers from receiving a "tax windfall."

Although it is true that legislative classifications may be "allowed some play in the joints," the prior holdings of this Court require that the State in choosing its parameters "cannot be so casual as this, particularly when a more precise classifica-

tion is easily drawn." *See, e.g., Williams v. Vermont*, 472 U.S. 14, 23 n. 8 (1985). When enacting Chapter 1018, the Legislature could have promoted its goal of eliminating tax windfalls by drawing a classification based upon the amount of the taxes received or the magnitude of the tax refund owed, rather than upon the use of the overassessed realty. Nor did the Legislature enact Chapter 1018 as a first step toward eliminating all tax havens and windfalls in Suffolk County. As the lower court anticipated, the Appellate Division's argument improperly centers upon the legislative goal itself, rather than the arbitrary and unlawful classification that the Legislature chose to achieve that goal:

> Any type of improvement to real property can create a tax haven .... The Legislature's judgment that taxpayers should not receive windfalls is not called into question here. [Footnote omitted.] What is at issue, and what is in fact "palpably arbitrary," is the classification the Legislature has chosen to effect its aim. [Citation omitted.]

Prodell, 166 Misc. at 612-13, 630 N.Y.S.2d at 883 (App. D, *infra*, p. 15a).

The Appellant Division also argued that Chapter 1018 was constitutional because the "statute did not, by its terms, single out or limit itself to only the [Shoreham Wading-River Central School] District." *Prodell*, 222 A.D.2d at 182, 645 N.Y.S.2d at 589 (App. C, *infra*, p. 7a). In seeking to uphold the "Used and Useful Act," however, the State of New York unsuccessfully made a similar argument in *Long Island Lighting Company v. Cuomo*, 666 F. Supp. 370 (N.D.N.Y. 1987). In that action, LILCO challenged, under the Equal Protection Clause, an amendment to the Public Service Law that precluded the owner

of a nuclear plant from recovering costs attributable to the construction and operation of the facility, where the owner failed to obtain an Nuclear Regulatory Commission ("NRC") license to operate the plant by a date certain or ceases to operate the plant after it becomes "used and useful" in the generation of electricity. *Id.* at 422-423; Public Service Law § 66(24)(a). By its terms, the statute applied only to a privately owned utility owning a nuclear power plant for which the NRC had yet to issue an operating license as of the effective date of the statute. As with Chapter 1018 in the present case, the Used and Useful Act applied only to Shoreham. 666 F. Supp. at 422. LILCO complained that the statute unfairly treated the sole owner of a nuclear power plant differently from joint or multiple owners of a nuclear power plant. The State countered that it properly singled out LILCO in mandating the application of "used and useful" principles in determining its rate base because, at the time the statute was enacted, Shoreham was the only nuclear plant in New York likely to recover its costs through the generation of electricity. *Id.* at 423-424. The Court rejected the State's argument and declared the statute unconstitutional:

> The fact that the terms of a statute, if drafted in such a way that it applied to all like-situated individuals, would in the legislature's estimation actually affect only one of those individuals does not justify drafting the statute in such a way that it applies only to that individual and not to the others who are similarly situated. This is akin to a small community, believing that one particular individual is prone to steal automobiles, passing an ordinance prohibiting that individual from stealing automobiles but not imposing a similar prohibition on all others in the community. Clearly such an ordinance would offend the "element of neutrality that must

> always characterize the performance of the sovereign's duty to govern impartially." *Cleburne*, 473 U.S. at 452, 105 S.Ct. at 3261.

Cuomo, 666 F. Supp. at 424.

Similar to the situation in *Cuomo*, the New York Supreme Court here properly declared Chapter 1018 unconstitutional under the Equal Protection Clause because there is no conceivable rational basis for the classification created by the statute. The Appellate Division's reversal of that well-analyzed decision should therefore be reviewed by this Court.

CONCLUSION

Because of the Appellate Division's failure to address the palpably arbitrary nature of the statutory classification and its clear misunderstanding as to the identity of the individuals impacted by the unconstitutional statute, this petition for a writ of certiorari should be granted.

Dated: Poughkeepsie, New York
May 13, 1997

RESPECTFULLY SUBMITTED:

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APPENDIX A—Order of New York Court of Appeals, dated February 13, 1997

State of New York,
Court of Appeals

At a session of the Court, held at Court of
Appeals Hall in the City of Albany
on the thirteenth day
of February 1997

Present, Hon. Judith S. Kaye, Chief Judge, presiding.

3-14 Mo. No. 1697
Albert Prodell, et al.,
Appellants,
v.
State of New York et al.,
Respondents.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellants herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied with one hundred dollars costs and necessary reproduction disbursements.

s/Stuart M. Cohen
Stuart M. Cohen
Clerk of the Court

APPENDIX B—Order of the New York Court of Appeals dated October 22, 1996

State of New York,
Court of Appeals

At a session of the Court, held at Court of
Appeals Hall in the City of Albany
on the twenty-second day
of October 1997

Present, Hon. Judith S. Kaye, Chief Judge, presiding

Mo. No. 1365 SSD 90

Albert Prodell, et al.,
Appellants,

v.

State of New York et al.,
Respondents.

The appellants having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

s/Stuart M.Cohen
Stuart M. Cohen
Deputy Clerk of the Court

APPENDIX C—Opinion and Order of the Appellate Division, Third Department, Decided and Entered July 18, 1996

Supreme Court—Appellate Division
Third Judicial Department

Decided and Entered: July 18, 1996 75689

ALBERT G. PRODELL, et al.,
Respondents,
v
STATE OF NEW YORK et al.,
Appellants.

OPINION AND ORDER

Calendar Date: June 3, 1996

Before: Cardona, P.J., Mercure, White, Casey and Peters, JJ.

Dennis C. Vacco, Attorney-General (Frank K. Walsh of counsel), Albany, for State of New York, appellant.

Schapiro & Reich, (Perry S. Reich of counsel), Lindenhurst, for Town of Brookhaven, appellant.

Lewis & Greer, (J. Scott Greer of counsel), Poughkeepsie, for respondents.

Cardona, P.J.

Appeal from an order and judgment of the Supreme Court (Kahn, J.), entered August 3, 1995 in Albany County, which, inter alia, declared unconstitutional Suffolk County Tax Act, article I, § 3 as amended by the Laws of 1983 (ch 1018).

In 1980, the Suffolk County Tax Act (hereinafter the Act) was amended by the State Legislature to require towns in Suffolk County to pay for school tax refunds stemming from court-ordered assessment reductions (see, L 1980, ch 837, § 3), (hereinafter the 1980 Amendment). In 1983, the Act was again amended to provide that upon any assessment reductions of nuclear power electrical generating facilities, the school districts in which such facilities were located would be responsible for the school tax refunds (L 1983, ch 1018, § 3) (hereinafter the 1983 Amendment). Although couched in general terms, the only school district affected by the 1983 Amendment was plaintiff Shoreham-Wading River Central School District (hereinafter the District) because that is where Suffolk County's only nuclear facility, the Shoreham Nuclear Power Plant (hereinafter Shoreham), is located. In June 1993, Supreme Court reduced Shoreham's assessment and directed Suffolk County to pay a refund of $38,145,885 plus interest to Shoreham's owner, Long Island Lighting Company. Plaintiffs, comprised of Suffolk County real property taxpayers (hereinafter collectively referred to as plaintiff taxpayers) and the District, commenced this action seeking, inter alia, a judgment declaring the 1983 Amendment unconstitutional under the Equal Protection Clauses of both the Federal and State Constitutions (see, US Const 14th Amend; NY Const, art I, § 11). Following joinder, plaintiffs moved for summary judgment and defendants cross-moved for the same

relief.[1] Supreme Court granted plaintiffs' motion as it found that the 1983 Amendment was unconstitutional. Defendants appeal.

We turn first to the claim by defendant Town of Brookhaven (hereinafter the Town) that neither the District nor plaintiff taxpayers have standing to maintain the action. Although this issue was never raised by defendants in their cross motions and was not addressed by Supreme Court, defendants did allege as affirmative defenses in their answers that plaintiff taxpayers lacked standing. These defenses, however, related solely to plaintiff taxpayers and not the District. Therefore, the issue of the District's standing is not properly before this court. As to plaintiff taxpayers' standing, this court specifically determined in Board of Educ., Shoreham-Wading Riv. Cent. School Dist. v State of New York (111 AD2d 505, appeals dismissed 66 NY2d 603, 854) that the concerns of the District's taxpayers over the impact of the 1983 Amendment on them were sufficient to gain them standing to challenge the constitutionality of the statute (id., at 507; see, Boryszewski v Brydges, 37 NY2d 361). Accordingly, we reject the Town's lack of standing argument.

Turning to the merits, we begin by noting that the challenged statute must be upheld if its classification is rationally related to achieving a legitimate State purpose (see, Western & S. Ins. Co. v Board of Equalization, 451 US 648, 657). In addition, taxing statutes enjoy a strong presumption of constitutionality (see, Trump v Chu, 65 NY2d 20, 25, appeal dismissed 474 US 915). The burden is on the one challenging the distinction to show by the "clearest demonstration that [the statute] discriminates invidiously" as well as "to negate every conceivable basis which might support it" (Matter of Cove Hollow Farm v State of N. Y.

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[1]Supreme Court initially granted the cross motions on the ground that the action was premature. On appeal, however, this court found the matter ripe for determination on the merits and remitted the matter to Supreme Court (211 AD2d 966).

Tax Commn., 146 AD2d 49, 53; see, Trump v Chu, supra). Our scope of review in the field of taxation is narrow and the Legislature is accorded large leeway in making classifications and drawing lines (see, Trump v Chu, supra, at 25). Keeping these principles in mind, we find that, in this case, plaintiffs have not overcome their burden.

In reaching this conclusion, we look first to the 1983 Amendment's stated purpose, which was to prevent school district taxpayers from reaping unwarranted windfalls. According to the Assembly memorandum in support of the legislation, nuclear-powered electric generating facilities create "tax havens" resulting in lower taxes for residents of school districts which contain them, and taxpayers not located in those tax havens "should not have to pay school tax refunds to the power facilities receiving assessment reductions" (Assembly Mem, Bill Jacket, L 1983, ch 1018). In striking down the 1983 Amendment, Supreme Court did not question the statute's purported purpose. Indeed, plaintiffs specifically concede that the Legislature has a legitimate interest in eliminating tax windfalls. What the court found fault with was the method used by the Legislature to achieve its purpose. The court found that "the classification and the goal, the 'means' and the 'end', are wholly disconnected". We disagree.

In the year preceding the enactment of the 1983 Amendment, the record indicates that the District's tax rate was $18.84 per $100 of assessed value while nearby school districts averaged $43.20 per $100 of assessed value. The Legislature specifically found that nuclear power facilities "due to their high value, pay substantial taxes" (Assembly Mem, Bill Jacket, L 1983, ch 1018). As such, they created tax havens resulting in lower taxes in the school districts which contained them. Therefore, should a nuclear power facility ultimately be determined to be overassessed and entitled to a refund, the Legislature concluded

that the other school districts should not be required to pay the refund, given that they did not share in the benefit of the initial overassessment. Given these facts, we are of the view that, in distinguishing nuclear power facilities from other types of property uses, the Legislature could rationally have assumed that if such facilities turned out to be overassessed, any tax refund would impose a greater tax windfall for school districts with such facilities if they did not have to pay the entire refund themselves.

Nor do we find the fact that there was only one school district actually affected by the 1983 Amendment to be fatal. If there had been more school districts in the same position as the District, the 1983 Amendment would still have applied. The statute did not, by its terms, single out or limit itself to only the District. Plaintiffs attribute an improper intent since the District was the only one affected by the statute. However, where, as here, there are legitimate purposes to justify the classification "whether they are the purposes which actually motivate the Legislature or not", the legislation will still be deemed to have a rational basis (Trump v Chu, 65 NY2d 20, 28, supra).

Likewise, we do not accept Supreme Court's conclusion that because the 1983 Amendment applied regardless of the amount determined to be owed as a refund (i.e., it applied whether the refund was $1 or $1 million), it violated equal protection principles. In enacting the 1983 Amendment, the Legislature noted that tax refunds could amount to $18 million, which would be an unconscionable burden to place on those taxpayers not residing within the school districts that reaped the initial benefits (Assembly Mem, Bill Jacket, L 1983, ch 1018). In fact, as it turned out, the refund determined to be owed was over $38 million. Under these circumstances, the Legislature was warranted in assuming, and as it turned out correctly so, that any refund owed would be substantial. In determining that these factors do not serve to invalidate the 1983 Amendment, it

should be remembered that the Legislature was " 'not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value' " (Trump v Chu, 65 NY2d 20, 25, supra, quoting Allied Stores v Bowers, 358 US 522, 527).

Accordingly, the order and judgment of Supreme Court should be modified to declare that the 1983 Amendment has not been shown to be unconstitutional.

Mercure, White, Casey and Peters, JJ., concur.

ORDERED that the order and judgment is modified, on the law, with costs, by reversing so much thereof as granted plaintiffs' motion and awarded them summary judgment declaring Suffolk County Tax Act, article 1, § 3, as amended by Laws of 1983 (ch 1018), to be unconstitutional; defendants' cross motion granted, summary judgment awarded to them and it is declared that said statute has not been shown to be unconstitutional; and, as so modified, affirmed.

ENTER:

Michael J. Novack
Clerk of the Court

APPENDIX D—Decision of New York Supreme Court, Albany County, dated June 29, 1995

Supreme Court
Albany County

State of New York

ALBERT G. PRODELL, MICHAEL FUCITO, CAROLYN BAIER, NORMAN E. HOLDEN, WILLIAM C. HUDSON, RICHARD STRAND, MARY LOU ABATA, and JOHN K. DONALD, individually and on behalf of all other persons similarly situated, and the SHOREHAM-WADING RIVER CENTRAL SCHOOL DISTRICT

DECISION

Plaintiffs,

-against-

THE STATE OF NEW YORK and THE TOWN OF BROOKHAVEN

Defendants.

Supreme Court—Special Term—Remitted on January 19, 1995
Index No. 2336-86-R.J.I. No. 01-86-000939

JUSTICE LAWRENCE E. KAHN, Presiding

APPEARANCES: J. Scott Greer, Esq.
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KAHN, J.

The Shoreham Nuclear Power Plant continues to be a costly white elephant whose footfall is heard in many quarters. The essence of the dispute before the court is the question of who shall pay the multi-million dollar school tax refund due its previous owner. By virtue of the Suffolk County Tax Act (SCTA), that burden would seem to fall squarely on the shoulders of the taxpayers that reside in the Shoreham-Wading River

School District. Plaintiffs seek to change that result and brought the instant action seeking injunctive and declaratory relief based upon the alleged unconstitutionality of chapter 1018 of the Laws of 1983.

Previously, all parties had moved for summary judgment pursuant to CPLR 3212. Defendant Town of Brookhaven had also sought a change of venue to Suffolk County. This court granted summary judgment dismissing the action as premature. The Appellate Division subsequently modified that order finding that the action was ripe for a determination on the merits and remitted the matter to this court. See Prodell v. State of New York, 621 N.Y.S.2d 712.

The question of venue must, of course, be decided first. The defendant Town did not make a statutory demand for change of venue pursuant to CPLR 511 (a). The Town nevertheless contends that, pursuant to CPLR 504 (2), this action should be venued in Suffolk County. The statute provides that the place of trial for all actions against a town shall be in the county where the town is situated. CPLR 504 (2). "Despite its apparently mandatory tone, CPLR 504 does not foreclose the court from considering the discretionary grounds for change . . . of venue set forth in CPLR 510 (3)." Messinger v. Festa, 94 A.D.2d 792 (citations omitted). The Town must therefore demonstrate that the "convenience of material witnesses and the ends of justice will be promoted by the change" of venue sought. CPLR 510(3).

However, CPLR 511 (a) also requires that a motion for change of place of trial under these circumstances "shall be made within a reasonable time after commencement of the action." This action was commenced during January, 1986. Defendant Town answered on March 27, 1986. This motion for change of venue was made on September 15, 1993. Since the operative facts controlling any decision regarding appropriate venue were known to the Town from the outset of the litigation, the 7 1/2-year period that has elapsed cannot be said to be a

"reasonable time after commencement." CPLR 511 (a); Walsh v. J.W. Mays, Inc., 168 AD2d 444. Moreover, although the policy of minimizing governmental inconvenience is a factor in the determination of a CPLR 510(3) motion (JoAnn Holmes v. Greenlife Landscaping, Inc., 171 AD2d 916, 917), it is not the only factor. Here, there has been no showing made regarding the identities and occupations of the material witnesses who would need to travel to Albany County to participate in this litigation. Indeed, the motion is only supported by an attorney's affidavit which "supplies no basis for a finding that . . . the convenience of material witnesses and the ends of justice will be promoted by the change." Id.

Accordingly, the venue of this action shall remain Albany County.

Turning to the merits, it is first noted that the SCTA was amended in 1980 to provide that towns in Suffolk County and not school districts would be responsible for school tax refunds based upon court-ordered reassessments. This codified an ongoing de facto practice previously at odds with State law that requires school districts to refund to a taxpayer excess school taxes paid as a result of an overassessment. Real Prop. Tax L. 726 (1) (c); see Board of Education, Shoreham-Wading River Central School Dist. v. State of New York, 111 A.D.2d 505.

The amendment of the SCTA under attack in this action was made by the Legislature in 1983 and provides that school tax refunds shall not be charged by a town to a school district "except where the assessment subject to such proceeding is applicable to property improved by a nuclear powered electrical generating facility." Laws of 1983, Chapter 1018, Section 3. The stated legislative purpose behind the 1983 amendment is succinctly set forth in the Assembly Memorandum in Support of Legislation:

> This bill is to protect Suffolk Co. taxpayers from paying certain tax refunds for school districts in which they do

> not live. This bill is designed to prevent the taxpayers in Brookhaven Township from paying any tax refund on behalf to (sic) the Shoreham-Wading River School District due to Grievance system settlements on the LILCO Nuclear Power Plant. The taxpayers of that school district have reaped windfall taxes from that plant and should therefore pay any refunds." (Plaintiffs Exhibit "C").

Arguing in support of the amendment, the Assembly sponsor Stated that "nuclear powered electric generating facilities have created 'tax havens' resulting in lower school taxes for residents of school districts which contain them. Taxpayers not located in those 'tax havens' school districts should not have to pay school tax refunds to the power facilities receiving assessment reductions." New York State Assembly 1983 Committee Bill Memorandum, Assembly Bill 3969, Plaintiffs' Exhibit "C". The sponsor further noted that it "would be an unconscionable burden to place on the taxpayers of Brookhaven Township when the people of the Shoreham-Wading River School District reaped the original eighteen million tax windfall." Id.

Plaintiffs contend that the 1983 amendment to the SCTA violates the Equal Protection Clause of the New York State and Federal Constitutions[1] because it creates a classification that is arbitrary, capricious and discriminatory.

"Taxing statutes, like other social and economic legislation that neither classify on the basis of a suspect class nor impair a fundamental right, must be upheld if the challenged classification is rationally related to achievement of a legitimate State purpose." Trump v. Chu, 65 N.Y.2d 20, 25; Town of

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[1]It is noted for the purposes of this analysis that the equal protection clause found in the New York State Constitution (Article 1, Section 11) is no broader in coverage than the federal provision. Under 21 v. City of New York, 65 N.Y.2d 344.

Tonawanda v. Ayler, 68 N.Y.2d 836, 837.) Moreover, "there is a strong presumption that statutes are constitutional, such that 'unconstitutionality must be demonstrated beyond a reasonable doubt.' " Town of Brookhaven v. State of New York, 142 A.D.2d 338, 340. It must also be presumed "that the Legislature has made sufficient inquiry to find the facts necessary to support the legislation as well as the need or desirability of the action." Oelbermann Associates v. Borov, 141 Misc. 2d 838, 842 (citations omitted).

It need not be said that the State has a legitimate interest in ensuring that similarly situated taxpayers pay the same share of the tax burden. Foss v. City of Rochester, 65 N.Y.2d 247, 254. "Equality and uniformity of taxation are the aim, for, if one taxpayer escapes payment, the burden is placed—disproportionately and unfairly—on another." Johnson v. Smith, 297 N.Y. 165, 170. Here, the tax burden arrives in the shape of liability for court-ordered real property tax refunds. Since these refunds will ultimately be paid by the taxpayers of the responsible governmental subdivision, the State has an interest in seeing that the burden impacts similarly situated taxpayers in a uniform manner.

The 1983 amendment to the SCTA defines a class—taxpayers residing in school districts in which another taxpayer from that school district has received a court-ordered real property tax assessment reduction with respect to property improved by a nuclear powered electric generating facility. These taxpayers, by this amendment, have been afforded the distinction of being the only class of Suffolk County taxpayers that may not look to their town, the tax-assessing body, to refund overpaid school taxes. The constitutionality of this amendment thus turns on whether this classification rationally relates to the State's interest in seeing that all similarly situated taxpayers bear the same tax burden with respect to real property tax refunds. Trump v. Chu, 65 N.Y.2d at 25.

In asking whether a challenged classification rationally relates to a legitimate State interest or purpose, the court must decide if it was "reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose." Western & S. L. I. Co. v. Bd. of Equalization, 451 U.S. 648, 668. Here, the answer is no. The classification is flawed in that it presumes that the presence of a nuclear power plant in a school district creates a tax haven and/or windfall for the residents of that school district. Any type of improvement to real property can create a tax haven for residents of a school district if the result is that the particular parcel contributes a substantial portion of the tax base. Similarly, the residents of a school district can be said to receive a "windfall" if they are not made to refund the school taxes that this overassessed improvement generated. The Legislature's judgment that taxpayers should not receive windfalls is not called into question here.[2] What is at issue, and what is in fact "palpably arbitrary," is the classification the Legislature has chosen to effect its aim. Trump v. Chu, 65 N.Y.2d at 25. The classification shifts the burden of refunding property taxes from the town to the school district based upon a single irrelevant criterion—the involvement of property improved by a nuclear power plant. The refund due after the tax certiorari proceedings may be only one dollar, but the statute nevertheless shifts the burden without any demonstrated inequity simply because a certain type of improvement was located on the subject real property.

To be valid, the challenged statutory provision must have some mechanism that facilitates the furthering of the State's unquestionably legitimate interest—the fair distribution of the tax burden. "The State may not rely on a classification whose

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[2]The legislature's implicit finding, that taxpayers who benefit from a windfall are not similarly situated with taxpayers who do not, is likewise not questioned and is presumptively valid.

relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." Cleburne v. Cleburne Living Center, 473 U.S. 432, 446; Nordlinger v. Hahn, 505 __U.S. __, 112 S.Ct. 2332, 120 L.Ed.2d 1, 13. Here, the classification and the goal, the "means" and the "end", are wholly disconnected. The Legislature's use of the challenged classification implies that nuclear power plants are inherently overassessed thus warranting the transfer of tax refund liability in every case to prevent windfall tax benefits. This is not a rational notion and will not be upheld even given that the Legislature has "large leeway in making classifications" in the field of taxation. Trump v. Chu, 65 N.Y.2d, at 25 quoting Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 359.[3]

That the challenged amendment may, in this case, achieve a result perceived as fair does not cure its constitutional infirmity. Statutes must be written to apply to all persons similarly situated and any statute written to apply to one individual or group "would offend the 'element of neutrality that must always characterize the performance of the sovereign's duty to govern impartially.' " Long Island Lighting Co. v. Cuomo, 666 F. Supp. 370, 424, quoting City of Cleburne v. Cleburne Living Center, 473 U.S., at 452. This is the heart of equal protection. Indeed, "nothing opens the door to arbitrary action so effectively as to allow . . . officials to pick and choose only a few to whom they will apply legislation and thus escape political retribution that might be visited upon them if larger numbers were affected. Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation." Railway Express

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[3]While legislative classifications are "allowed some play in the joints," the State in choosing its criterion "cannot be so casual as this, particularly when a more precise and direct classification is easily drawn." Williams v. Vermont, 472 U.S. 14, 23 fn. 8.

Agency v. New York, 336 U.S. 106, 112-113 (Jackson, J., concurring). The statute here must therefore be assessed from a perspective that looks beyond Shoreham.

Accordingly, Chapter 1018 of the Laws of 1983 shall be declared unconstitutional under both the New York State and Federal Constitutions because the classification created bears no relationship to the achievement of a legitimate State purpose and its application shall therefore be enjoined.

Plaintiffs' motion for summary judgment is granted. Defendants' motions are denied. The above without costs.

All papers are being returned to the attorneys for the plaintiffs, who shall submit an order and judgment, on notice, in conformance herewith, with a copy of this decision annexed.

Dated: June 29, 1995
Albany, New York